



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 26th day of April 1996

SERVED: April 26, 1996

VALUJET AIRLINES

Violations of 49 U.S.C. §41712 and
14 CFR 399.84

CONSENT ORDER

This consent order concerns violations of 49 U.S.C. § 41712 and the price advertising requirements in 14 CFR 399.84 by ValuJet Airlines ("ValuJet"). This order directs ValuJet to cease and desist from future violations and to pay compromise civil penalties.

As a U.S. certificated air carrier, ValuJet is subject to the Department's policy on price advertising embodied in 14 CFR 399.84. Section 399.84 requires that any advertising or solicitation which states a price for air transportation must state the entire price to be paid. Advertisements that do not conform to the requirements of section 399.84 also violate 49 U.S.C. § 41712, which prohibits unfair or deceptive practices and unfair methods of competition.

The Department's Office of Aviation Enforcement and Proceedings ("Enforcement Office") has, as a matter of enforcement policy, permitted carriers to state separately in fare advertisements any charges that are imposed or approved by the government on a per-passenger basis, such as customs, immigration, or agriculture inspection ticket surcharges, international departure taxes and security and passenger facility ticket surcharges, only if such fees are clearly noted elsewhere in the advertisement and their amount stated. See, e.g., Orders 96-1-13, 93-4-40 and 92-10-41.¹

¹ This enforcement policy has also been enunciated in several letters to the airline and travel industry. See, e.g., Enforcement Office Letters dated: March, 18, 1996; July 14, 1995; March 9, 1995; and May 1, 1992.

ValuJet published or caused to be published each-way fare advertisements which appeared in the *Washington Post* newspaper on January 31 and February 2, 1996. The advertisements promoted service and listed fares to various points in Florida and other locations.

The February 2 advertisement had a small print disclaimer at the bottom that stated "Airport Passenger Facility Charges, where applicable, are extra. All fares are one-way and non-refundable." The February 2 advertisement did not contain the required information relating to the amount of the applicable Passenger Facility Charges.² Failure to specifically state the dollar amounts of the per-passenger government-imposed or -approved taxes and fees makes it impossible for consumers to determine the full price to be paid for any of the advertised fares, and, as stated above, constitutes violations of section 399.84 of our regulations and 49 U.S.C. § 41712.

The January 31 advertisement stated the following, among other things, in the body of the advertisement: "Fly ValuJet to any of four great Florida Sun Spots™ for just \$84 anytime you want, from now through February 14, 1996." In a call to the carrier, the Enforcement Office's investigator was told by a ValuJet representative that the advertised fare was valid only for off-peak travel, not "anytime" as stated in the advertisement. On its face the advertisement misstates the availability of the advertised fare and, as promulgated, also violates 49 U.S.C. § 41712.

In mitigation, ValuJet states that the violations were unintentional and that each advertisement appeared only once. The carrier points out that this is the first time that it has been the subject of an enforcement action. ValuJet further states that it has cooperated with the Enforcement Office and has taken steps to ensure such violations do not occur again.

The Enforcement Office has carefully considered the information provided by ValuJet; however, it continues to believe that enforcement action is warranted in connection with these advertisements. In this regard, the Enforcement Office and ValuJet have reached a settlement of this matter. In order to avoid litigation and without admitting or denying the alleged violations, ValuJet has agreed to a settlement of this matter with the Enforcement Office. ValuJet consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and section 399.84 of the Department's regulations (14 CFR 399.84) and to the assessment of \$20,000 in compromise of potential civil penalties, of which \$10,000 is suspended for one year and will be forgiven, as described below. The Enforcement Office believes that the assessment is warranted in light of the nature and circumstances of the violations at issue here and the mitigating circumstances described by ValuJet. This order and the penalty it assesses will provide an adequate deterrence to future noncompliance by ValuJet, as well as by other domestic and foreign sellers of air transportation.

² This advertisement also included a statement that the advertised fares were not available during "[a]ll holidays and special events." The Enforcement Office has advised the carrier that the meaning of the term "special events" might not be easily understood by the average consumer. ValuJet has agreed to modify the wording of this disclosure in future fare advertising.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that ValuJet violated 14 CFR 399.84 by failing to specifically state the dollar amounts of the Passenger Facility Charges for the advertised fares in advertisements that it published or caused to be published in the *Washington Post* newspaper on or about February 2, 1996;
3. We find that ValuJet violated 49 U.S.C. § 41712 by (1) engaging in the conduct described in ordering paragraph 2 above and (2) failing to disclose peak/off-peak travel restrictions applicable to the advertised fares in advertisements that it published or caused to be published in the *Washington Post* newspaper on or about January 31, 1996;
4. ValuJet, and all other entities owned or controlled by or under common ownership with ValuJet, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and 14 CFR 399.84;
5. ValuJet is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of the total penalty amount, \$10,000 shall be due within 15 days of the date of issuance of the order. The remaining \$10,000 will be forgiven unless ValuJet fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41712 or Part 399 of the Department's regulations within one year of the date of issuance of this order, in which case the remaining \$10,000 shall become due and payable immediately; and
6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered will subject ValuJet to assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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